

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 712 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ASSTT.COLLECTOR OF CUSTOMS

Versus

TALAB ISA BHAYA

Appearance:

MR SC Patel for Petitioner

SERVED for Respondent No. 1

MR SA PANDYA PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 18/10/96

ORAL JUDGEMENT

One Haji Haji Ismail was arrested by the Officers of the Customs Department in the year 1983 and was produced before the learned Chief Judicial Magistrate, Jamnagar, who released the accused on bail in the sum of Rs 75,000/ and surety in the like amount. The respondent

no. 1, stood as surety for said Haji Haji Ismail. It appears that the said Haji Haji Ismail did not appear before the trial court on 16.3.1983 and, therefore, the trial court issued non-bailable warrant against him and the show-cause notice was issued to the respondent no. 1 directing him to remain present on 22.3.1983. It appears that the respondent no. 1 could not produce the accused Haji Haji Ismail on 22.3.1983. He was, therefore, granted time to produce the accused till 23.3.1983. At the request of respondent no. 1 further time was granted up to 31.3.1983. It appears that the respondent no. 1 did not remain present on 31.3.1983 before the trial court. The trial court, therefore, forfeited the surety bond of Rs 75,000/ and also imposed the penalty of Rs 75,000/ on respondent no. 1.

The respondent no. 1 filed an appeal being Criminal Appeal No. 21 of 1983 challenging the said order of the learned Chief Judicial Magistrate, Jamnagar. The appeal was heard and decided by the learned Additional Sessions Judge, Jamnagar, who, by his judgment and order dated 27.2.1989 reduced penalty from Rs 75,000/ to Rs 5000/ on the ground that after the order was passed, the accused Haji Haji Ismail remained present before the trial court on 24.5.1983. The said order has been challenged by the Collector of Customs in this petition under Article 227 of the Constitution of India.

Mr. SC Patel learned Additional Standing Counsel appearing for the petitioner has submitted that the learned Additional Sessions Judge ought not to have exercised the discretion in favour of the respondent no. 1 by reducing the penalty of Rs 75,000/ to Rs. 5000/. Mr. Patel therefore, submitted that the original amount imposing penalty of Rs 75,000/ passed by the learned Chief Judicial Magistrate, is required to be imposed on respondent no. 1.

Now in the instant case, as held by the learned Additional Sessions Judge, the accused Haji Haji Ismail has remained present before the court on 24.5.1983 and considering the same, the learned Judge has exercised the discretion in favour of the respondent no. 1 by reducing the amount of penalty from Rs 75,000/ to Rs. 5000/. There may be a difference of opinion regarding the amount of penalty, but considering the fact that the original accused has surrendered himself before the judicial custody cannot be over looked for considering the question regarding the imposition of penalty. Once a discretion has been exercised by the learned Additional Sessions Judge, there would hardly be a ground for this

court to reconsider the same while exercising the powers under Article 227 of the Constitution of India. This court while exercising such powers cannot decide such question as this Court is not sitting as a Court of appeal. In view of this, I see no reasons to interfere in the discretionary order passed by the learned Additional Sessions Judge, Jamnagar at such a belated stage. There being no substance in the petition and the same requires to be rejected.

In the result, this petition is rejected. Rule is discharged.
